

## Part II.

# QUALIFICATION OF LAND UNDER SECTION 1-d-1

The Texas Constitution permits special agricultural appraisal only if land and its owner meet specific requirements defining farm and ranch use. Land won't qualify simply because it is rural or has some connection with agriculture. Neither will it qualify because it is open land that has no other possible use. The law does not guarantee a tax break for everyone who makes a living from the land. Casual uses such as home vegetable gardens do not really constitute agriculture.

Section 23.51 of the Property Tax Code sets the standards for determining whether land qualifies: "Qualified open-space land means land that is currently devoted principally to agricultural use to the degree of intensity generally accepted in the area."

To qualify his land for agricultural appraisal, the property owner must show the chief appraiser that his land meets the Sec. 23.51 standard. To do so, the property owner must apply for the appraisal. The owner must give the chief appraiser all the information he needs to determine whether the land qualifies. The property owner must also inform the chief appraiser of any changes in the status of his land.

### **Texas Constitution, Article VIII, Section 1-d-1. Open Space Land**

(a) To promote the preservation of open-space land, the legislature shall provide by general law for taxation of open-space land devoted to farm or ranch purposes on the basis of its productive capacity and may provide by general law for taxation of open-space land devoted to timber production on the basis of its productive capacity. The legislature by general law may provide eligibility limitations under this section and may impose sanctions in furtherance of the taxation policy of this section.

(b) If a property owner qualifies his land for designation for agricultural use under Section 1-d of this article, the land is subject to the provisions of Section 1-d for the year in which the designation is effective and is not subject to a law enacted under this Section 1-d-1 in that year.

### **Section 23.51(1)-(2), (6), Property Tax Code. Definitions.**

(1) "Qualified open-space land" means land that is currently devoted principally to agricultural use to the degree of intensity generally accepted in the area and that has been devoted principally to agricultural use or to production of timber or forest products for five of the preced-

ing seven years or land that is used principally as an ecological laboratory by a public or private college or university. Qualified open-space land includes all appurtenances to the land. For the purposes of this subdivision, appurtenances to the land means private roads, dams, reservoirs, water wells, canals, ditches, terraces, and other reshaping of the soil, fences, and riparian water rights.

(2) "Agricultural use" includes but is not limited to the following activities: cultivating the soil, producing crops for human food, animal feed or planting seed or for the production of fibers; floriculture, viticulture, and horticulture; raising or keeping livestock; raising or keeping exotic animals for the production of human food or of fiber, leather, pelts, or other tangible products having a commercial value; and planting cover crops or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure. The term also includes the use of land to produce or harvest logs and posts for the use in constructing or repairing fences, pens, barns, or other agricultural improvements on adjacent qualified open-space land having the same owner and devoted to a different agricultural use.

(6) "Exotic animal" means a species of game not indigenous to this state, including axis deer, nilga antelope, red sheep, or other cloven-hoofed ruminant mammals.



This section will explain each eligibility requirement for chief appraisers and property owners. Brief descriptions of each requirement appear below:

- Agricultural appraisal applies to the land and not to other property that may be connected with the land.
- The land must be currently devoted principally to agricultural use.
- The land must be devoted to an agricultural use to the degree of intensity that is typical in an area.
- The land must have been used principally for agriculture or timber production for any five of the preceding seven years.
- Land owned by a foreigner is ineligible for agricultural appraisal. Land inside city limits has more stringent qualification requirements and may be ineligible. Property owners may waive the right to 1-d-1 appraisal.
- Land used as an ecological laboratory may qualify for agricultural appraisal.
- The property owner must file a valid application form.

Each of these seven requirements is discussed in detail below. Appendix A, on page 45, shows how these requirements apply to sample properties.

## **1-d-1 LAND: Agricultural appraisal applies to the “land” and not to other property that may be connected with the land**

Agricultural appraisal applies only to land. It does not apply to improvements on land, minerals, or agricultural products. For example:

**Improvements**—buildings and structures such as barns, sheds, silos, and other farm out-buildings—must be appraised separately at market value. However, fences are treated as appurtenances and are not appraised separately. Land beneath farm buildings and other agricultural improvements does qualify for the special appraisal because it is used in connection with the agricultural operation.

**Minerals**—oil, gas, or any hard mineral—must be appraised separately at market value.

**Products of the agricultural operation**—peaches, cotton, peanuts, grain, cattle, etc.—in the hands of the producer are generally exempt from taxation because of other provisions of Texas law. Farm and ranch equipment designed and used primarily for agriculture—implements of husbandry—are also exempt.

Some man-made alterations of, or additions to, agricultural land are valued as a part of the land. These appurtenances to the land—canals, water wells, roads, stock tanks, and other similar reshaping of the soil—are included in the value of the land and are not separately appraised. Standing timber is real property. Decorative trees, windbreaks, fruit trees, or nut trees are appurtenances to land. Although a water well is an appurtenance, pumps, windmills, and other fixed attachments are valued separately at market value.

The law also states that riparian water rights—the landowner’s right to use natural streams of water adjoining his land—are appurtenances and included in the special appraisal of the land. Statutory water rights, which in the absence of a riparian right require a permit from the Water Commission, are appraised separately at market value. For example, a right granted by permit to divert water from a stream would be valued separately at market value.

## **AGRICULTURAL USE: Land must be currently devoted principally to agricultural use**

Section 23.51(2), Property Tax Code, defines the term “agricultural use” as including the following activities:

- Cultivating the soil.
- Producing crops for human food, animal feed, or planting seed or for the production of fibers.
- Floriculture. Floriculture is the cultivation and management of ornamental and flowering plants.
- Viticulture. Viticulture is the cultivation of grapes.
- Horticulture. Horticulture is the cultivation of fruits, vegetables, flowers, herbs, or other plants.
- Raising or keeping livestock. "Livestock" means a domesticated animal that derives its primary nourishment from vegetation, supplemented as necessary with commercial feed. Livestock includes meat or dairy cattle, horses, goats, swine, poultry, and sheep. Wild animals are not livestock.
- Raising exotic game for commercial use. Exotic game means a cloven-hoofed ruminant mammal that is not native to Texas and is not "livestock." Raising such game may qualify, but must meet the primary use test discussed on page 8.
- Participation in a government program and normal crop rotation. Land left idle to participate in a government program is used for agriculture. Land left idle for crop rotation qualifies until it is left idle for longer than the crop rotation period typical for the crop in the area.

This list is not exhaustive. Production of any commercially valuable livestock, fish, or poultry product probably constitutes agricultural use as well. For example, the Texas Attorney General has ruled that agriculture includes the term "mariculture" and that land used to produce fish and other forms of aquatic life can qualify for an agricultural appraisal. Op. Tex. Att'y Gen. No. JM-87 (1983).

Land used to harvest wood for building uses may qualify in specific circumstances. To qualify, the land must be adjacent to qualified 1-d-1 land owned by the same person. Also, the wood must be used only to build or repair fences or agricultural improvements on the adjacent property.

Some agriculture-related activities that do not qualify land for agricultural appraisal are:

**Harvesting native plants or wildlife.** Harvesting shrubs that grow wild on the land—mountain laurel, yaupon, etc.—or harvesting or hunting native wild animals such as deer or turkey will not qualify land.

**Processing plants or animals.** Activities that take place after the crop or animal has been raised and harvested do not qualify land for special appraisal. Activities such as pasteurizing and bottling milk; fermenting grapes and bottling wine; or slaughtering, dressing, and packing meat will not qualify land for agricultural appraisal.

By definition, any activities a non-producer carries out on agricultural products constitute processing. A non-producer cannot qualify property for agricultural valuation. For example, the operator of a grain silo who purchases grain for storage and re-sale cannot receive agricultural valuation for the land the silo occupies.

Under certain circumstances, however, primary producers may also process agricultural products. In these cases, the land devoted to processing activities does not qualify for agricultural valuation. In such cases, the line between production and processing activities can become extremely fine. Chief appraisers must be certain to gather all facts necessary for making an accurate distinction. No hard-and-fast rules clearly distinguish between production and processing. In general, however, an activity must meet at least one of the following standards before it counts as processing:

- Processing begins with those steps typically carried out at the first level of trade beyond production. Storage or packaging for wholesale trade would constitute "processing," as would slaughtering livestock. The producer's interim storage prior to sale to a wholesaler or other middleman would not. Goods in storage would be exempt as farm products in the hands of the producer, and land devoted to storing them would be eligible for agricultural valuation.
- Processing begins when primary agricultural products are broken into smaller parts or combined with other products. Grain, for example, is processed when it is milled.

Milk is processed when it is separated into butter, milk, and other dairy products. Grapes are processed when they are washed, sorted, or crushed. Vegetables and fruits are processed when they are washed and packaged for sale at the wholesale or retail level.

- Processing begins when activities occur that enhance the value of primary agricultural products. Milling grain, pasteurizing milk, and ginning cotton constitute processing. Packaging products for transport to market would not constitute processing, but packaging them for sale would.

## **Primary Use**

According to the statute, land must be devoted principally to an agricultural use. If the land is used for more than one purpose, the most important or primary use must be agriculture. For example, pleasure gardening isn't the principal use of residential land.

Other uses do not prevent land from qualifying if the primary use is agriculture. For example, land used primarily to graze cattle could also be leased for hunting. Leasing land for deer hunting is compatible with a primary use of land for grazing cattle. The appraiser must determine which use is primary. If one of these other uses replaces agriculture as the primary use of land, then the land is no longer principally devoted to agricultural use and cannot qualify for agricultural appraisal. Pages 31 to 33 discuss the effect of changes of use on qualification.

### **Exotic Game**

The primary use test is particularly important for exotic game since only production for food or other commercially valuable products qualifies. Exotic game is defined to include axis deer, nilga antelope, red sheep, and other "cloven-hoofed ruminants" not native to Texas. The owner must raise the game to produce human food or tangible products that have commercial value, such as leather or hides.

Many game ranches also offer recreational hunting as a way of earning income and managing a herd of breeding stock. Because hunting is recreation, an exotic game ranch devoted solely to hunting could never qualify for agricultural appraisal.

A ranch that produces exotic game products and conducts recreational hunts may or may not qualify for special appraisal. Qualification in such a case depends on which use is primary. A chief appraiser should consider all relevant information to determine the primary use. Relevant questions include:

- Are there physical improvements such as high fences to control the herd?
- Are there stocking levels to justify the investment and ensure a reasonable future income?
- Is there a breeding and herd management procedure that emphasizes commercially valuable products (meat or leather) over recreational products (trophy heads)?
- Is there an active business plan showing herd size, harvesting schedules, and harvesting reports?
- Do state or federally approved inspectors supervise slaughter and dressing?

### **Fish**

Chief appraisers should analyze the raising of fish or fish products using the same standards they apply to exotic game. Commercial fish production differs from keeping game fish for purely sporting or recreational purposes. This difference is not necessarily related to the scale of the operation, nor is it related to any intent to produce income or make a profit. Raising fish is a qualified agricultural land use when all the elements of a bulk harvest are present. Taking fish by individual line is clearly a recreational activity.

### **Horses**

Land used primarily to raise or keep horses qualifies for agricultural appraisal. Land used primarily to train, show, or race horses, to ride horses for recreation, or to keep or use horses in some other manner that is not strictly incidental to breeding or raising horses does not qualify. Similarly, land used as a stable, where horses are kept, fed, and cared for, is not being used primarily for an agricultural purpose, unless the stable is incidental to breeding and raising horses.

## **Current Devotion to Agricultural Use**

The land must be “currently devoted” to the agricultural use. The land must qualify on January 1. In the event that agricultural use is not evident on January 1, the chief appraiser should grant productivity valuation if the owner can show evidence that he intends to put the land into agricultural use and that agriculture will be the primary use for the bulk of the calendar year covered by the application.

## **DEGREE OF INTENSITY TEST: Land must be devoted to an agricultural use to the degree of intensity that is typical in an area**

The degree of intensity test measures whether the land is being farmed or ranched to the extent typical for agricultural operations. The previous section described whether a particular use was primarily “agricultural.” To receive a productivity appraisal, however, the land must also be used for an agricultural purpose to the degree of intensity typical in the area. This test is intended to exclude land on which token agricultural use occurs in an effort to obtain tax relief.

The law does not state what degree of intensity qualifies a particular type of land. The chief appraiser must set the standards according to local agricultural practices. Because of the variety of soil types, climatic conditions, and crops in a state as large as Texas, no single statutory definition could cover all possible uses.

## **Setting Degree of Intensity Standards**

The degree of intensity test measures what the owner is putting into his agricultural enterprise—in time, labor, equipment, management, and capital—and compares it with typical levels of these “inputs” for the same type of enterprise in the area generally.

To set degree of intensity standards, the chief appraiser should analyze each type of commodity production in his area. This analysis should break down the typical steps in producing the commodity and attempt to specify how much time, labor, equipment, and so on is typical for each level.

For example, farming dryland cotton requires tilling soil, planting, applying herbicides, and harvesting. Tilling soil requires a certain amount of specific labor and equipment, as do each of the other steps. The chief appraiser should try to determine the typical minimum levels involved for each step.

Similarly, raising beef cattle requires fences, proper management of land for long-run forage, enough animal units to match the land’s carrying capacity, and a herd management procedure to get the animals to market. What kind of fencing is typical? How frequently is it maintained? How many animal units are typically carried? Degree of intensity specifications address these levels of input in detail for each step of the enterprise.

Degree of intensity standards will vary from one type of agricultural operation to another. In most cases, property owners must prove that they are following all the common production steps for their type of operation and putting in typical amounts of labor, management, and investment. However, an operation is not disqualified simply because it differs from the typical operation. Appraisers should not, for example, disqualify a labor intensive farm because most comparable operations are capital intensive. The total effort finally determines whether a given agricultural operation qualifies, not the level of each separate “input.”

### **Defining an Area**

The chief appraiser’s decision on what constitutes an “area” will define “typical” agricultural intensity. The size of the area can vary with the commodity. For a common crop, the chief appraiser may be able to look to farming practices within the county. Rarer crops may require the chief appraiser to consider a multi-county region to decide the typical agricultural inputs. Finally, where the landowner applies different practices than are typical, the chief appraiser should be careful not to discourage experimentation or innovation. The agricultu-

ral appraisal laws should not be interpreted to discourage innovations in agricultural production.

## **TIME PERIOD TEST: The land must have been used principally for an agricultural use or timber production for any five of the preceding seven years**

The five out of seven years' use requirement is self-explanatory. Use principally for agriculture in any five of these seven years qualifies land for agricultural appraisal. A property owner can also point to a history of timber production in meeting the five-year test. Land used primarily for either timber or agricultural production during any five of the previous seven years may qualify.

As long as agriculture was the principal use in the preceding years, the land qualifies even if that use did not meet the degree of intensity requirement in all or some of those years. *Reiss v. Williamson County Appraisal District*, 735 S.W.2d 633 (Tex.App.—Austin, 1987 writ denied).

## **INELIGIBILITY: Some land is automatically ineligible for qualification under 1-d-1**

Even if land meets all the preceding conditions, two situations may block approval of an application. These situations are discussed in detail below.

### **Land Located Within the Boundaries of a City or Town**

Land within the boundaries of a city often will not qualify. Land located within an incorporated city or town must meet the criteria applicable to all land and must meet one of the following:

- the city must not provide the land with general services comparable to those provided in other parts of the municipality having similar features and population; or
- the land must have been devoted principally to agricultural use continuously for the preceding five years.

#### **Section 23.56, Property Tax Code. Land Ineligible for Appraisal as Open-Space Land.**

Land is not eligible for appraisal as provided by this subchapter if:

(1) the land is located inside the corporate limits of an incorporated city or town, unless:

(A) the city or town is not providing the land with governmental and proprietary services substantially equivalent in standard and scope to those services it provides in other parts of the city or town with similar topography, land utilization, and population density; or

(B) the land has been devoted principally to agricultu-

ral use continuously for the preceding five years;

(2) the land is owned by an individual who is a nonresident alien or by a foreign government if that individual or government is required by federal law or by rule adopted pursuant to federal law to register his ownership or acquisition of that property; or

(3) the land is owned by a corporation, partnership, trust, or other legal entity if the entity is required by federal law or by rule adopted pursuant to federal law to register its ownership or acquisition of that land and a nonresident alien or a foreign government or any combination of nonresident aliens and foreign governments own a majority interest in the entity.

## Land Owned by a Non-Resident Alien or Foreign Government

Some kinds of foreign ownership disqualify land. If the property owner is a non-resident alien (a non-U.S. citizen who does not reside in the U.S.), the land can't qualify.

Similarly, a corporation can't qualify its land if non-resident aliens, foreign governments, or both control the corporation. These owners are required by federal law to report ownership or transfers of agricultural land. Sec. 23.56(2) and (3), Property Tax Code, bars these owners from qualifying.

The registration law also applies to resident aliens who leave the country and to land that is put to agricultural use after the alien acquires it.

Registration is required by federal law—the Agricultural Foreign Investment Disclosure Act of 1978. The information is used to prepare reports to Congress and the President on the effect of foreign holdings upon family farms and rural communities.

Tax assessors and chief appraisers can obtain copies of Foreign Investment Disclosure reports from the Agricultural Stabilization and Conservation Service office. All acreage under the same ownership in one county is reported on one form. No additional federal filing is necessary until a later change of ownership or use occurs. An example of the federal foreign investment disclosure form is found in Appendix F, Form 8.

## Land on Which 1-d-1 Appraisal is Waived

An owner may waive his right to 1-d-1 appraisal. A 1-d-1 waiver is effective for 25 years and applies to the land even if ownership changes. Owners may file a waiver even if the land does not qualify for 1-d-1 appraisal. Waivers may be filed with some or all of the units that tax the property.

A waiver filed before May 1 becomes effective when it is filed. For good cause, the chief appraiser may extend the May 1 deadline for 60 days. Waivers filed after the deadline become effective the year following the filing year.

To revoke a waiver, the owner must file an application for revocation with the governing body of each taxing unit where the waiver is effective. The unit's governing body must vote to approve the revocation and make a finding that the revocation will not affect any of the unit's debt obligations.

The Water Commission is authorized to make rules ensuring that waivers submitted to conservation and reclamation districts are properly and timely executed and are irrevocable. The State Highways and Public Transportation Commission has authority to make the same rules for waivers submitted to road utility districts within the commission's jurisdiction. Commissioners courts have this authority for waivers submitted to road districts created by the commissioners court.

### **Section 23.20, Property Tax Code. Waiver of Special Appraisal.**

(a) An owner of real property may in writing waive the right to special appraisal provided by Subchapter C, D, E, F, or G of this chapter as to one or more taxing units designated in the waiver. In a tax year in which a waiver is in effect, the property is appraised for each taxing unit to which the waiver applies at the value determined under Subchapter A of this chapter or the value determined under Subchapter C, D, E, F, or G of this chapter, whichever is the greater value.

(b) A waiver may be submitted with an application for appraisal under Subchapter C, D, E, F, or G of this chapter

or at any other time. A property owner who has waived special appraisal under this section as to one or more taxing units may make additional waivers under this section as to other taxing units in which the property is located.

(c) A waiver under this section is effective for 25 consecutive tax years beginning on the first tax year in which the waiver is effective without regard to whether the property is subject to appraisal under Subchapter C, D, E, F, or G of this chapter. To be effective in the year in which the waiver is executed, it must be filed before May 1 of that year with the chief appraiser of the appraisal

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## ECOLOGICAL LABORATORIES: Land used as an ecological laboratory may qualify for agricultural appraisal

Land used principally as an ecological laboratory by colleges or universities may qualify for agricultural appraisal. The property owner must follow the same application procedures required to qualify other 1-d-1 land. The land must be principally used as an ecological laboratory. In determining use, appraisers should apply the same principles they use to identify the primary use of agricultural land (page 8). A model application for ecological labs is included in Appendix F, Form 3.

## APPLICATION: A property owner must file a valid application form

To be valid, the application for agricultural valuation must be on a form provided by the appraisal district and adopted by the State Property Tax Board. The SPTB application form appears in Appendix F at the end of this manual (Form 2).

The appraisal district may copy the SPTB form and offer it for use by local property owners. SPTB rules allow appraisal districts to use a form that varies somewhat in format and wording from the SPTB form, but the district's form must contain the same elements and ask for the same information as the SPTB form. The rules do not permit appraisal districts to add additional questions to the initial application. If, however, the initial application does not contain all the information the district needs in order to rule on a particular application, the chief appraiser can require the applicant to supply additional information. This procedure is described later in this section.

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district in which the property is located, unless for good cause shown the chief appraiser extends the filing deadline for not more than 60 days. An application filed after the year's deadline takes effect in the next tax year.

(d) A waiver filed under this section is applicable to the property for the term of the waiver, runs with the land, and is binding on the owner who executed the waiver and any successor in interest. A waiver may not be revoked as to any taxing unit except on approval by official action of the governing body of the taxing unit on a finding by the governing body that the revocation of the waiver would not materially impair the contractual, bond, or other debt obligation of the taxing unit wholly or partly payable from property taxes to which the property is subject. An application for revocation must be filed with the governing body of each taxing unit to which the revocation is to apply. A waiver may not be revoked if revocation is prohibited under a rule adopted under Subsection (e) of this section. The revocation is effective in the year in which the governing body approves the revocation if the chief appraiser receives a written notice of the approval before the appraisal review board approves the appraisal records. If the notice is not received before the deadline the revocation takes effect in the next tax year.

(e) The Texas Water Commission, a commissioners court, and the State Highway and Public Transportation

Commission each, by rule, may ensure that a waiver under this section is properly and timely executed, and is irrevocable by the owner of the property to which the waiver applies or by any other related person receiving or proposing to receive, directly or indirectly, the proceeds of any bonds issued by or to be issued by the taxing unit. The rules of the water commission apply to waivers applicable to taxing units that are conservation and reclamation districts subject to the jurisdiction of the commission. The rules of the commissioners court apply to waivers applicable to taxing units that are road districts created by the commissioners court. The rules of the highway and public transportation commission apply to waivers applicable to taxing units that are road utility districts subject to the jurisdiction of the commission.

(f) For computations required to be made under this title, the appraised value of the property for taxation by a taxing unit to which a waiver applies is the value at which the property is taxed under this section.

(g) A waiver of a special appraisal of property under Subchapter C, D, E, F, or G of this chapter does not constitute a change of use of the property or diversion of the property to another use for purposes of the imposition of additional taxes under any of those subchapters.

### **Sec. 23.21. Waiver of Special Appraisal.**

This section is substantially similar to Sec. 23.20.

Where the district offers its own form, the applicant may choose between the SPTB application form and the district's form. The applicant must completely provide all information that is requested on the SPTB form.

Landowners must file applications with the chief appraiser in the appraisal district where the land is located. Taxpayers whose land is appraised by more than one appraisal district must file an application in each district.

A property owner may file a single application form covering all tracts within an appraisal district. He does not have to file a separate form for each tract so long as he provides sufficient information to show that all tracts qualify under the law.

The chief appraiser should encourage the owner to file a single form if the owner is farming or ranching several tracts as a unit. The chief appraiser must view the entire agricultural operation as a unit—not with respect to the activities on each individual parcel. The single application form notifies the appraisal district of the unity of operation.

## **Other issues about the application process**

### **Filing Deadline**

The deadline for applications is "before May 1," meaning the application form must be postmarked or filed no later than midnight April 30. For good cause and only on the property owner's request, the chief appraiser may extend the filing deadline in individual cases for not more than 60 days. An extension should be granted in writing and must be requested before the May 1 deadline.

The Property Tax Code does not define "good cause." However, it is commonly something the applicant can't control. Being sick or injured and not able to transact normal business for a period that effectively prevents filing on time is usually good cause. Being out of town on business or vacation or simply forgetting about the filing deadline is never enough.

### **Late Applications**

Even if he misses the deadline, the property owner can file a late application until the appraisal review board approves records for that year (usually about July 20). However, there is a penalty for late application. An application filed after April 30 is subject to a penalty equal to 10 percent of the difference between the tax if imposed at market value and the tax imposed at the agricultural productivity value. If the chief appraiser extended the deadline for that property owner, this penalty does not apply.

The chief appraiser must note the penalty in the appraisal records. He must also send the property owner written notice of the penalty explaining the reasons. A sample form for this notice appears as Form 6 in Appendix F. The tax assessor of the taxing unit adds the penalty amount to the tax bill and collects the penalty along with the annual tax payment.

A lien attaches to the property until the penalty is paid. If the penalty remains unpaid on February 1 of the following year (or a later delinquency date if tax bills are mailed late), penalty and interest on the penalty amount accrue as if it were a delinquent tax.

### **Failure to File the Application Form**

If a person does not file a valid application before the appraisal review board approves the appraisal roll, the land is ineligible for an agricultural appraisal in that tax year.

### **One-Time Application**

Once the application is filed and approved under 1-d-1 requirements, the land continues to receive agricultural appraisal every year without a new application unless the ownership changes, the land's eligibility changes, or the chief appraiser requires a new application. If the chief appraiser requires a new application, the property owner must meet the deadlines that apply to a new applicant.

### **Notification of Changes**

If the land's ownership, eligibility, or use-type changes, the property owner must notify the appraisal office in writing before the next May 1. If the owner fails to do so, one or more penalties will apply. The SPTB form for notice of use changes appears as Form 5, Appen-

dix F.

If the land remains under the same ownership and the owner fails to inform the appraisal district that he has converted it from one qualifying agricultural use to a second qualifying use, the property owner must pay a penalty equal to 10 percent of the difference between the taxes imposed under the prior use-type and the taxes that would have been imposed under the new use-type. This penalty applies for each year the property received the incorrect agricultural valuation, but for no more than 10 years.

If the property erroneously receives agricultural appraisal because a new owner failed to file his own application or because an owner's use of the land no longer qualifies, the chief appraiser must calculate the difference between the land's market value and its agricultural value. The owner must pay taxes and penalties on the difference between these values for the time that the land erroneously received agricultural appraisal. He must also pay a 10 percent penalty on these taxes. This additional tax and penalty may not cover a time period exceeding 10 years. In the year he discovers the change, the chief appraiser should add this value to the appraisal roll as property omitted in a prior year.

For example, if a farmer reduces the scale of his operations and no longer meets the degree of intensity requirements, his land will not be eligible for agricultural appraisal. If the landowner fails to notify the appraisal district and therefore receives agricultural appraisal, the land is back-assessed. For each year in question (not to exceed ten years), the owner must pay the difference between the taxes based on agricultural valuation and the taxes based on market value. He must also pay the 10 percent penalty on that difference. Since the land has not been taken completely out of agricultural use, it is not subject to rollback taxes.

When a penalty is imposed, the chief appraiser must notify the property owner (see Appendix F, Form 6). This notice must include a brief explanation of the procedures for protesting the penalty. The chief appraiser notes the penalty in the appraisal records, and the tax assessor adds the penalty to the property's annual tax bill.

#### **Chief Appraiser's Action**

The chief appraiser must review each application and decide whether to:

- approve it and grant agricultural appraisal;
- disapprove it and ask for more information; or
- deny the application.

The chief appraiser must determine the validity of all timely filed applications before he turns all appraisal records over to the district's appraisal review board. The deadline is May 15 or as soon afterward as is practicable.

The chief appraiser usually gives the appraisal records to the appraisal review board (ARB) by May 15. The ARB spends about two months reviewing them, including a review to make sure that all applications for agricultural appraisal have been correctly granted. Property owners who were denied agricultural appraisal may file a protest with this board. Taxing units that believe special appraisal was erroneously granted to any property owner may seek to remove that grant by filing a challenge with the review board.

The chief appraiser must rule on all late-filed applications before the appraisal review board approves the records for the year. If he denies the application, he must notify the applicant, in writing, within five days. This notice must explain the reasons for the denial and the procedures for protesting it. The applicant has 10 days from the date the notice is mailed to file a protest with the ARB.

#### **Additional Information**

If the initial application form does not contain all the information needed to determine whether property qualifies, the chief appraiser may request additional information. The chief appraiser may request only additional information that is necessary to determine whether the land qualifies for 1-d-1 appraisal.

Information contained in income statements, income tax returns, land lease rates, and lease agreements is not necessary to determine whether the land qualifies. If the chief appraiser asks an owner for this type of information, the request should clearly state that the owner is not required to give the information to qualify for 1-d-1 appraisal.

The applicant must provide additional information within 30 days after the date of the

request or his application will be denied.

If there is good cause, the chief appraiser may extend the deadline to allow additional information. An extension cannot exceed 15 days (see Appendix F, Form 7).

#### **When an Application is Denied**

If a chief appraiser denies an application, he must deliver a notice of the denial to the applicant within five days of the denial. The notice must contain a brief explanation of the procedures for protesting to the appraisal review board.

## **A SUMMARY OF THE 1-d-1 APPLICATION PROCESS**

The property owner must file a completed application to qualify his land for agricultural appraisal.

- An application must be filed in every appraisal district where the owner's property is located.
- Where the applicant owns several parcels of property within one appraisal district, he may file a single application form covering all the parcels. The deadline for filing an application form is April 30.
- The chief appraiser may extend the deadline 60 days. The applicant must request an extension and must show good cause for extending his deadline.
- Good cause is generally a reason not within the applicant's control that prevents timely filing.
- Late applications may be filed any time before the appraisal review board approves records for that year. Late applications are subject to a penalty.
- Failure to file an application before the records are approved for the year makes the land ineligible for agricultural appraisal in that tax year.
- After the land is approved for agricultural appraisal, no other applications are necessary unless the chief appraiser requests one or changes occur in the status of the property.
- Change of use, change in the class of use, and change of ownership require a new application.
- If the land is taken entirely out of agricultural use, the land is ineligible for agricultural appraisal.
- If the property erroneously receives agricultural appraisal, it is subject to "back assessment" and a penalty.
- Failure to notify the appraisal district of a change in agricultural use subjects the property to a penalty, but not a "back-assessment."

When the chief appraiser receives an application he must review it and take one of the following three actions: he may approve it; he may ask for additional information; or he may deny the application.

- The chief appraiser must approve or deny all timely-filed applications before May 15.
- The chief appraiser must notify the applicant, in writing, of his denial of an application and explain his reasons for denial.

#### **Sec. 23.54, Property Tax Code. Application.**

(a) A person claiming that his land is eligible for appraisal under this subchapter must file a valid application with the chief appraiser.

(b) To be valid, the application must:

(1) be on a form provided by the appraisal office and prescribed by the State Property Tax Board; and

(2) contain the information necessary to determine the validity of the claim.

(c) The State Property Tax Board shall include on the form a notice of the penalties prescribed by Section 37.10, Penal Code, for making or filing an application containing a false statement. The board, in prescribing the contents of the application form, shall require that the form permit a claimant who has previously been allowed appraisal under this subchapter to indicate that previously reported information has not changed and to supply only the eligibility information not previously reported.

(d) The form must be filed before May 1. However, for good cause the chief appraiser may extend the filing deadline for not more than 60 days.

(e) If a person fails to file a valid application on time, the land is ineligible for appraisal as provided by this subchapter for that year. Once an application is filed and appraisal under this subchapter is allowed, the land is eligible for appraisal under this subchapter in subsequent years without a new application unless the ownership of the land changes or its eligibility under this subchapter ends. However, the chief appraiser if he has good cause to believe the land's eligibility under this subchapter has ended, may require a person allowed appraisal under this subchapter in a prior year to file a new application to confirm that the land is currently eligible under this subchapter by delivering a written notice that a new application is required, accompanied by the application form, to the person who filed the application that was previously allowed.

(f) The appraisal office shall make a sufficient number of printed application forms readily available at no charge.

(g) Each year the chief appraiser for each appraisal district shall publicize, in a manner reasonably designed to notify all residents of the district, the requirements of this section and the availability of application forms.

(h) A person whose land is allowed appraisal under this subchapter shall notify the appraisal office in writing before May 1 after eligibility of the land under this subchapter ends or after a change in the category of agricultural use. If a person fails to notify the appraisal office as required by this subsection a penalty is imposed on the property equal to 10 percent of the difference between the taxes imposed on the property in each year it is erroneously allowed appraisal under this subchapter and the taxes that would otherwise have been imposed.

(i) The chief appraiser shall make an entry in the appraisal records for the property against which the penalty is imposed indicating liability for the penalty and shall deliver a written notice of imposition of the penalty to the person who owns the property. The notice shall include a brief explanation of the procedures for protesting the im-

position of the penalty. The assessor for each taxing unit that imposed taxes on the property on the basis of appraisal under this subchapter shall add the amount of the penalty to the unit's tax bill for taxes on the property against which the penalty is imposed. The penalty shall be collected at the same time and in the same manner as the taxes on the property against which the penalty is imposed. The amount of the penalty constitutes a lien on the property against which the penalty is imposed and accrues penalty and interest in the same manner as a delinquent tax.

(j) If the chief appraiser discovers that appraisal under this subchapter has been erroneously allowed in any one of the 10 preceding years because of failure of the person whose land was allowed appraisal under this subchapter to give notice that its eligibility has ended, he shall add the difference between the appraised value of the land under this subchapter and the market value of the land to the appraisal roll as provided by Section 25.21 of this code for other property that escapes taxation.

#### **Sec. 23.541. Late Application for Appraisal as Agricultural Land.**

(a) The chief appraiser shall accept and approve or deny an application for appraisal under this subchapter after the deadline for filing it has passed if it is filed before approval of the appraisal records by the appraisal review board.

(b) If appraisal under this subchapter is approved when the application is filed late, the owner is liable for a penalty of 10 percent of the difference between the amount of tax imposed on the property and the amount that would be imposed if the property were taxed at market value.

(c) The chief appraiser shall make an entry on the appraisal records indicating the person's liability for the penalty and shall deliver written notice of imposition of the penalty, explaining the reason for its imposition, to the person.

(d) The tax assessor for a taxing unit that taxes land based on an appraisal under this subchapter after a late application shall add the amount of the penalty to the owner's tax bill, and the tax collector for the unit shall collect the penalty at the time and in the manner he collects the tax. The amount of the penalty constitutes a lien against the property against which the penalty is imposed, as if it were a tax, and accrues penalty and interest in the same manner as a delinquent tax.

#### **Section 23.57. Action on Applications.**

(a) The chief appraiser shall determine separately each applicant's right to have his land appraised under this subchapter. After considering the application and all relevant information, the chief appraiser shall, as the law and facts warrant:

(1) approve the application and allow appraisal under this subchapter;

(2) disapprove the application and request additional

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information from the applicant in support of the claim; or  
(3) deny the application.

(b) If the chief appraiser requests additional information from an applicant, the applicant must furnish it within 30 days after the date of the request or the application is denied. However, for good cause shown the chief appraiser may extend the deadline for furnishing the information by written order for a single period not to exceed 15 days.

(c) The chief appraiser shall determine the validity of

each application for appraisal under this subchapter filed with him before he submits the appraisal records for review and determination of protests as provided by Chapter 41 of this code.

(d) If the chief appraiser denies an application, he shall deliver a written notice of the denial to the applicant within five days after the date he makes the determination. He shall include with the notice a brief explanation of the procedures for protesting his action and a full explanation of the reasons for denial of the application.